In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1203

JOHNNY SIMPSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was indicted on July 8, 1971, for conspiring to import marijuana and for importing six hundred pounds of that substance on or about January 27, 1971, in violation of former 21 U.S.C. 176a (repealed, May 1, 1971, by P.L. 91-513, the Comprehensive Drug Abuse Prevention and Control Act). He was convicted after a jury trial in the United States District Court for the Southern District of Florida, on August 19, 1971, and was subsequently sentenced to concurrent terms of five years' imprisonment. After unsuccessfully appealing his conviction, he moved for a reduction of sentence pursuant to Rule 35, Fed. R. Crim. P., claiming that he was improperly given a mandatory sentence since he was tried and convicted after 21 U.S.C. 176a had been repealed.

This Court has recently held that, pursuant to the saving clause in the new Drug Abuse Act (Section 1103(a)), the mandatory sentencing provisions of the statutes repealed by that Act remain in effect for violations occurring prior to repeal. *Bradley* v. *United States*, No. 71-1304, decided March 5, 1973. It follows that the district court had no authority to grant petitioner's motion for reduction of sentence and a hearing on his motion would have served no useful purpose.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.